

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORINNE MICHELLE MELTON,

Defendant-Appellant.

FOR PUBLICATION

July 20, 2006

9:05 a.m.

No. 257036

Tuscola Circuit Court

LC No. 03-008812-FH

Official Reported Version

Before: Davis, P.J., and Neff, Fitzgerald, Saad, Bandstra, Markey, and Murray, JJ.

NEFF, J. (*concurring*).

I concur in the lead opinion by Judge Davis with respect to the interpretation of offense variable (OV) 9, which concludes that OV 9 does not encompass the danger of financial injury. However, I write separately because this case raises the additional question whether the trial court's scoring of OV 9 was correct on the basis that defendant's criminal conduct nevertheless placed two victims in danger of injury.

In this case, the trial court concluded that there were two victims, not because both suffered financial injuries, but because they were residents of the occupied dwelling and there was a possibility that they would come home during the home invasion, placing them "in danger of injury or loss of life," MCL 777.39(2)(a). The trial court reasoned that Mary Ann and Jeffrey Elbers, who resided in the home, should therefore be counted as victims.

Under MCL 777.39, the number of victims must be scored by counting "each person who *was placed in danger of injury . . .*":

(1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) Multiple deaths occurred 100 points

(b) There were 10 or more victims 25 points

(c) There were 2 to 9 victims 10 points

(d) There were fewer than 2 victims 0 points

(2) All of the following apply to scoring offense variable 9:

(a) Count each person who *was placed in danger of injury* or loss of life as a victim.

(b) Score 100 points only in homicide cases. [MCL 777.39 (emphasis added).]

In my view, the basis for scoring OV 9 recognized by the trial court warrants consideration.

/s/ Janet T. Neff